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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

IN RE:	:	CASE NO. G06-20632-REB
	:	
SCOTT LAMAR CHAMBERS and	:	CHAPTER 13
MARY JANE CHAMBERS,	:	
	:	
Debtors.	:	JUDGE BRIZENDINE

**ORDER GRANTING TRUSTEE'S MOTION
TO MODIFY PLAN FOR TREATMENT OF CREDITOR**

Before the Court is the motion of the Chapter 13 Trustee to modify plan for treatment of creditor. Through counsel, Debtors filed a response to the motion and counsel for the Trustee and for Debtors each submitted letter briefs to the Court following a hearing on the matter. At issue is whether, in view of a subsequently filed order avoiding the lien of a certain secured claim holder, in lieu of filing an objection to said claim Debtors may rely on the preclusive effect of an order confirming their plan, which proposes a specific valuation on property serving as collateral in connection with that claim. The Trustee's contention is that Debtors are required by the terms of their plan and under the law to file such an objection to claim. Upon consideration of same, and upon review of the pleadings, the argument set forth in the letter briefs, and applicable case law authority, the Court finds and concludes that the Trustee's motion should be granted in part.

In their first amended plan, confirmed by Order entered on July 13, 2006, the secured claim of Franklin Finance (First Franklin) is treated through a stated "replacement value" of \$0 and a corresponding monthly payment of \$0. As further provided in paragraph 6(A)(ii)(b) of the plan, the "portion of any allowed claim that exceeds the [replacement] value...will be treated as an unsecured claim." Additionally, the Court entered an Order on June 18, 2007 avoiding the lien

of First Franklin Financial Corporation a/k/a Franklin Finance pursuant to Debtors' non-contested motion. First Franklin filed a proof of claim on June 27, 2006 in the amount of \$885.20 as a secured claim. Debtors have not filed a separate written objection to this claim through the initiation of a contested matter.

As mentioned above, Trustee contends that the plan requires Debtors to file and obtain a favorable ruling on an objection to the proof of claim of First Franklin. Otherwise, according to the Trustee the plan does not set forth how this claim is to be paid if the lien is not both avoided and the related claim is not adjudged unsecured pursuant to such an objection. In addition, the statement in paragraph 10 of the plan that this claim "is not to be funded as secured" offers insufficient direction regarding how the claim is to be funded. In the motion, the Trustee further seeks a reduction in the attorney's fees of Debtors' counsel in the amount of \$500.00.

In support of their position, Debtors respond that nothing in their plan anticipates the filing of an objection to claim and that the plan specifically states that the valuation of the claim at \$0 is binding unless there is an objection to said provision. Debtors contend that the analysis in *Universal American Mortgage Co. v. Bateman (In re Bateman)*, 331 F.3d 821, 829-34 (11th Cir. 2003), supports their contention that once an order avoiding a lien has been entered by the court, an objection to the underlying proof of claim is not further required for the Trustee to treat the claim as unsecured. Citing the case of *In re Duggins*, 263 B.R. 233 (Bankr. C.D.Ill. 2001), as discussed but distinguished in *Bateman*, 331 F.3d 832 n. 10, Debtors argue that while a proof of claim is *prima facie* evidence of the claim's amount and validity, this same presumption does not extend to the secured value asserted in the claim.

Moreover, according to Debtors a secured claim's valuation as set forth in a proof of

claim does not supersede contrary treatment of the claim's valuation as provided for in a plan. See *In re Sernaque*, 311 B.R. 632 (Bankr. S.D.Fla. 2004). Their intention in the plan is not to "modify" the status of First Franklin's alleged secured claim or to "disallow" it. Instead, Debtors state the plan sets forth how the claim will be paid in the event the lien is avoided, which has already happened herein. Hence, First Franklin's claim is now unsecured by reason of same, and since it is treated as such through Debtors' plan which has been confirmed, said treatment of the claim cannot be challenged.

Referring to the case of *In re Hudson*, 260 B.R. 421, 429-37 (Bankr. W.D.Mich. 2001), the Trustee counters that the plan confirmation process, through which a secured claim may be modified as to value and applicable interest rate, must be accompanied by observance of the claims objection process under 11 U.S.C. § 502(b) and Fed.R.Bankr.P. 3007, through which a claim is reduced as to amount or bifurcated.¹ In other words, the *prima facie* evidence of a claim's *amount* and *validity* as represented by a proof of claim (see Sections 501 & 502(a)), *and* the amount of the *secured* portion of a claim and its applicable interest rate (see Section 506(a)) are two different things. Whereas the *former* is treated through the claims allowance process and Section 502(b), the *latter* is determined via the plan confirmation process, which is binding upon the claim holder, and by which the lien is modified and the secured claim is valued under Section 506(a) (see Sections 1322(b)(2) & 1325(a)(5)(B)). 260 B.R. at 436.

In *Hudson*, the court granted an objection to claim on the basis of its contrary amount,

¹ More precisely, the court in *Hudson* states that "[t]o reduce the bifurcated unsecured claim amount" a claim objection must be filed. It is the plan confirmation process that "establishes the treatment of the bifurcated secured claim, including value of the collateral and the present value interest rate." 260 B.R. at 437.

valuation, and interest rate as compared to the terms of a confirmed plan. Although the court held that the plan's treatment of the claim was controlling, the Trustee herein contends that *Hudson* is distinguishable from the present case in that a separate written objection had been filed of record, the collateral was fully identified in the plan itself, and the proposed valuation was reasonable. Consistent with *Hudson*, the Trustee further argues in her letter brief, "the claims process runs parallel to and in conjunction with the confirmation process."

Moreover, as stressed by the court in *Hudson* the legal process for determining claim allowance by filing an objection is of constitutional significance. Based on the requirements of procedural due process, this analysis focuses on the quantity and quality of notice provided the claim holder regarding the proposed treatment of, and payment on, its claim. 260 B.R. at 437-43. The Trustee also cites *In re Shank*, 315 B.R. 799, 806-07 (Bankr. N.D.Ga. 2004), which in turn relies on *Bateman*, 331 F.3d at 828, as holding that claims objections cannot be made through a plan and the terms of the plan are not "preclusive on the issue of allowance of a claim." Compliance with the procedure of Rule 3007 remains necessary to ensure that creditors may avail themselves of a meaningful opportunity to participate in the claims process as envisioned under the Bankruptcy Code. *Shank*, 315 B.R. at 814.

In the present case, Trustee contends Debtors are attempting to make just such an improper "constructive objection" to claim as opposed to following Rule 3007. *See Shank*, 315 B.R. at 805. This Court agrees. While *Bateman* distinguishes, but favorably notes *Duggins*, 263 B.R. 233, for the proposition that valuation is not presumed through the filing of a proof of claim but handled through plan confirmation, the Eleventh Circuit never collapses claims allowance into confirmation. 331 F.3d at 832 n. 10. In fact, as stated in *Shank* the Eleventh

Circuit specifically underscored the importance of both processes as evidenced by its reversal of the lower court's ruling that the claim amount set forth in the confirmed plan was binding. 315 B.R. at 805-06, citing *Bateman*, 331 F.3d at 828-29.

Although Debtors' plan sets forth a replacement value of \$0 and represents that they will file a motion to avoid the lien of First Franklin, the Court finds that these actions are legally insufficient to modify and fix the amount of its secured claim. Absent an objection, the claim remains presumptively valid as to amount and status as an allowed claim. A review of the case law and applicable statutes demonstrates that without such an objection, the entire claim amount is deemed enforceable as secured if so stated in the claim. The question here is whether to value it as secured, partially secured, or unsecured. While the claims objection process may not be the only way to establish this status, the Court finds that an objection is needed in the present case.²

This conclusion follows because whether or not a debtor can accomplish bifurcation of a claim through a plan that clearly sets forth such intent in compliance with Section 506(a) and Bankruptcy Rule 3012, the process effected here through Debtors' plan and motion to avoid lien does not produce this result as it did not provide for sufficient notice. *See Sernaque*, 311 B.R. at 635. Thus, First Franklin's secured claim is deemed allowed and to be treated in such manner. *Accord Hudson*, 260 B.R. at 430-36; *see also* 11 U.S.C. §§ 1322(b)(2) & 1325(a)(5)(B)(ii).

Further, enforcing Debtors' reading of their plan is administratively problematic insofar as the proposed treatment of the claim therein as of the confirmation date relies on future action by another motion. This situation puts the Trustee, First Franklin, and other creditors in many cases to the burden of constantly checking the docket to see if and when such motion has

² *See Sernaque*, 311 B.R. at 640-41; *In re Duggins*, 263 B.R. 233 (Bankr. C.D.Ill.2001).

in fact been filed. Until then, no one knows for sure what amount to pay on the claim as no one knows definitively whether it is secured in whole, in part, or at all.

Accordingly, based upon the foregoing reasoning, it is

ORDERED that the Trustee's motion to modify plan for treatment of creditor be, same hereby is, **granted** to the extent that in the absence of an objection, the claim of First Franklin Financial Corporation is to be paid as an allowed secured claim in the sum of \$885.20.

It is

FURTHER ORDERED that the Trustee's motion to reduce attorney's fees be, and same hereby is, **denied**.

The Clerk is directed to serve a copy of this Order upon Debtors' counsel, the Chapter 13 Trustee, counsel for First Franklin Financial Corp., and the United States Trustee.

IT IS SO ORDERED.

At Atlanta, Georgia this 5th day of February, 2008.



ROBERT E. BRIZENDINE
UNITED STATES BANKRUPTCY JUDGE